

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of Aug. 28, 2007

REMARKS/ARGUMENTS

The Examiner is thanked for the Official Action dated August 28, 2007. This request for reconsideration is intended to be fully responsive thereto.

Claims 1, 4, 7 and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by Bartholomae (USP 976,718). Applicant respectfully disagrees.

Anticipation under Section 102 requires that a prior art reference disclose every claim element of the claimed invention. *E.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986). The absence of any element of the claim from the cited reference negates anticipation. *E.g., Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 U.S.P.Q. 1264 (Fed. Cir. 1984).

Regarding claim 1: First, the examiner erroneously alleges that Bartholomae teaches a set of clave blocks (*j* and *j'*) each comprising a rigid body made of solid material (Figs. 1 and 3) and having an open cavity (*k* and *m*) therewithin defined solely by the solid material (Figs 1-4), and the bodies having substantially equal exterior dimensions and different volumes of the open cavities therewithin. The examiner further alleges that “although sockets *k* in *j* and *j'* have the same volume but the slot *m* in the walls of *j* is smaller than that in *j'*.” (Emphasis added). In other words, the examiner alleges that slot *m* in the wall of the sounding member *j* or *j'* defines the volume of the open cavities within a body of the sounding member *j* or *j'*.

Appl. No. 10/782,806
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While recognizing that the pending claims must be given their broadest reasonable interpretation consistent with the specification, we trust that that the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach, as stated in MPEP § 2111. We believe that those skilled in the art would not possibly interpret the slots m in the walls of j or j' as an open cavity therein or part of it. Moreover, the Examiner's position is erroneous, because the plain meaning of the word "cavity", as defined by the Random-House Webster's College Dictionary (1999 Second Random House Edition), is "a hollowed-out space." Also, those skilled in the art would recognize that the size or number of slots m in the wall of j does not affect the volume of the socket k , as, for example, the number of windows does not change a volume of a chamber. Clearly, the volume of the open cavities within a body of the sounding member j or j' is the volume of the socket k in the sounding member j or j' . It should be noted that in the previous Office Action of June 8, 2007, the examiner also conceded that "Bartholomae does not mention expressly: different volumes of the open cavities therewithin provided to generate musical tones of a variety of pitches." (see 2nd paragraph on page 3 of the Office Action of June 8, 2007).

Second, contrary to the examiner's allegations, Bartholomae teaches a sounding toy "in the nature of rattles" (page 1, lines 10-12) including two sounding members (j and j'). One of ordinary skill in the musical art would not interpret the rattle-type sounding toy as the set of clave blocks.

Third, contrary to the examiner's allegations, Bartholomae does not mention that the

Appl. No. 10/782,806
In re Van Der Meulen, J.
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sounding members (j and j') substantially equal exterior dimensions, as he does not mention that they have different volumes of the open cavities therewithin.

Fourth, Bartholomae shows two sounding members (j and j') that appear to have substantially equal exterior dimensions and the substantially equal volumes of the open cavities (sockets k) therewithin (see Figs. 1 and 2), as conceded by the examiner.

Therefore, Bartholomae fails to disclose the set of clave blocks having different volumes of the open cavities formed therewithin, but substantially equal exterior dimensions.

For these reasons, Applicant respectfully submits that the applied document, i.e., '718 Patent to Bartholomae, does not meet this standard of anticipation. Accordingly, the rejection of claims 1, 4, 7 and 8 under 35 U.S.C. 102(b) is improper.

Further regarding claim 4: the examiner erroneously alleges that Bartholomae teaches that the bodies of the sounding members (j and j') have mounting rings (i). contrary to the examiner's allegations, Bartholomae clearly defines the element (i) as the holes formed in the bases of the sounding members (j and j') (page 1, lines 43-45), not the mounting rings. Therefore, the rejection of claim 4 under 35 U.S.C. 102(b) over Bartholomae is improper.

Further regarding claims 7 and 8: the examiner erroneously alleges that Bartholomae teaches bodies of different volumes having different thickness of the solid material, and openings having different perimeters. In fact, Figs. 1 and 2 of Bartholomae clearly show that the sounding members (j and j') have equal thickness of the solid material and openings having the same perimeters. Therefore, the rejection of claims 7 and 8 under 35 U.S.C. 102(b) over Bartholomae

Appl. No. 10/782,806
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is improper.


Claims 2 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomae. Claims 5 and 6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomae in view of Simons et al. (USP 6,091,009). The applicant respectfully disagrees.

Claims 2, 3, 5 and 6 depend upon the base claim 1, thus all the arguments regarding the patentability of claim 1 are equally applicable to claims 2, 3, 5 and 6.

It is respectfully submitted that claims 1-8 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

Respectfully submitted:
Berenato, White & Stavish

By: _____


George Ayvazov
Reg. N° 37,483

6550 Rock Spring Drive, Suite 240
Bethesda, Maryland 20817
Tel. (301) 896-0600
Fax (301) 896-0607